

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

CHAIM STERN,

Respondent.

HUDALJ 93-2048-DB(S)
Decided: February 2, 1994

Anne J. Chiaviello, Esquire
For the Respondent

Robin E. McMillan, Esquire
For the Department

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arose pursuant to 24 C.F.R. § 24.100 *et seq.* as a result of action taken by the Associate General Deputy Assistant Secretary for Housing for the Department of Housing and Urban Development ("the Department" or "HUD" or "the Government") on April 27, 1993, in a letter suspending Respondent from participating in covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD. The suspension was based on a Criminal Information filed against Respondent by the State of Connecticut on January 13, 1993, charging him with Larceny in the First Degree (Medicaid Fraud), and is to remain in effect pending resolution of the charges. Respondent has appealed the Department's action of April 27, 1993, and requested a hearing. Pursuant to 24 C.F.R. § 24.313(b)(2)(ii), the hearing is limited to the submission of written briefs and documentary evidence. The Government filed a brief in support of the suspension and a reply in opposition to Respondent's motion to dismiss the suspension. Respondent also filed a reply to the Government's reply.

Findings of Fact

1. Respondent is a controlling management employee and purchasing agent/financial consultant for Winthrop Health Care Center ("Winthrop"), a nursing home located in New Haven, Connecticut. (Government's Exhibit 1, hereinafter "GX.1," p. 13)

2. Respondent is a controlling management employee and purchasing agent/financial consultant for Rego Park Nursing Home ("Rego Park") located in Flushing, New York. (GX. 1, p. 4)

3. Respondent was an officer and a director of Bridgeport Health Care Center, Inc. ("BHCC") a nursing home located in Bridgeport, Connecticut, from about March of 1990 until February 4, 1993, when he resigned those positions. Respondent remains an employee of BHCC, but the record does not reveal the nature of his duties. (GX. 2, p. 4; Respondent's affidavit) During the period Respondent was an officer and a director of BHCC, the nursing home applied for a HUD mortgage insurance commitment on a \$25,332,000 loan. (GX. 2)

4. Respondent has more than 18 years' experience as an operator of nursing homes. (GX. 2, p. 5)

5. On January 13, 1993, before Respondent resigned from his positions at BHCC, the State of Connecticut charged him with Larceny in the First Degree (Medicaid Fraud). On May 26, 1993, the charges were amended to allege:

LARCENY IN THE FIRST DEGREE BY DEFRAUDING A PUBLIC COMMUNITY ... between the 7th day of July, 1987 and the 30th day of June, 1992, CHAIM STERN by one scheme and course of conduct, did with intent to defraud, aid in the filing for reimbursement of four (4) false cost reports for fiscal year ending 9/30/86; fiscal year ending 9/30/87; fiscal year ending 9/30/88; and fiscal year ending 9/30/89 with the Department of Income Maintenance in conjunction with the State Medicaid program, Title XIX of the Social Security Act, as amended. Said false cost reports overstated expenses of the Winthrop Health Care Center, Inc. of New Haven by falsely representing four (4) leases as arms length leases when in fact they were non-arms length leases in violation of § 17-311-52 of the Regulations of the State of Connecticut and which involved an amount of money in excess of ten thousand dollars (\$10,000.00) in violation of §§ 53a-122(a)(2); 53a-119(2); 53a-121(b); and 53a-8 of the Connecticut General Statutes. [GX. 1; Government's Information Motion]

Discussion

Respondent argues that he is not subject to the suspension provisions of HUD's regulations because he is no longer an officer and a director of BHCC. Furthermore, he complains that the Government has failed to prove that his remaining duties at BHCC, Winthrop, and Rego Park make him a "participant" and a "principal" within the meaning of the regulations. 24 C.F.R. §§ 24.105(m), 24.105(p), 24.110(a). In other words, Respondent argues that the Government does not have jurisdiction over him. That argument is without merit.

When BHCC submitted an application for HUD mortgage insurance, it became a "participant" within the meaning of the regulations. Section 24.105(m) of 24 C.F.R. defines a "participant" as "[a]ny person who *submits a proposal for*, enters into, or reasonably may be expected to enter into a covered transaction." (emphasis added) A loan guarantee or mortgage insurance by HUD is a "covered" transaction. See 24 C.F.R. § 24.110(a)(1)(i). An application for mortgage insurance is a "proposal." See 24 C.F.R. § 24.105(q). In other words, when BHCC submitted a proposal to enter into a covered transaction, it became a participant. As an officer and director of BHCC, Respondent exercised critical influence on BHCC affairs. He was not only a "principal" of a participant, but a participant in his own right. 24 C.F.R. § 24.105(m). See *also* 24 C.F.R. § 24.105(p).

Respondent's argument to the contrary notwithstanding, the Government retained jurisdiction over Respondent when he resigned his positions as an officer and a director of BHCC. As shown above, the definition of a participant is not confined to those persons who reasonably may be expected to enter into covered transactions in the future. The term includes those who have entered into covered transactions in the past as well as those who have proposed to do so.¹ Also meritless is Respondent's argument that suspension may be applied only to persons who currently exercise control over a participant. A respondent's past conduct, irrespective of his current conduct or position, may justify a suspension or debarment. See *Delta Rocky Mountain Petroleum, Inc. v. U.S. Dep't of Defense*, 726 F. Supp. 278 (D.Colo. 1989); *Agan v. Pierce*, 576 F. Supp. 257 (N.D. Ga. 1983).

¹The Government mistakenly argues to the effect that Respondent's current positions as Rego Park manager, Winthrop manager, and BHCC employee are enough, standing alone, to demonstrate jurisdiction. Respondent correctly points out that mere speculation that a respondent by virtue of his employment status could possibly participate in the future in a covered transaction does not suffice to prove jurisdiction.

A principal may be suspended from further participation in covered transactions based on adequate evidence to suspect that the principal has committed fraud or made false statements. 24 C.F.R. §§ 24.405(a), 24.305(a)(1) and (3). Respondent has been charged in a Criminal Information with multiple counts of fraud and making false statements. (GX.I) A Criminal Information constitutes "adequate evidence" for purposes of a suspension action. 24 C.F.R. § 24.405(b). Accordingly, cause exists to suspend Respondent.

It is the policy of the Federal Government to do business only with responsible persons. 24 C.F.R. § 24.115(a). HUD is authorized to impose suspensions to protect the public interest. 24 C.F.R. § 24.115(b). Charges of fraud and making false statements demonstrate a lack of business honesty and integrity that poses a clear and immediate risk to the Government. See *James A. Merritt and Sons v. Marsh*, 791 F.2d 328 (4th Cir. 1986).

Respondent's immediate suspension was in the public interest. The suspension will continue only until resolution of the subject matter of the Criminal Information. If the Information is dismissed or Respondent is found not guilty, then the suspension will be lifted. Meanwhile, the Government is protected from exposure to further potential harm.

Conclusion and Determination

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to suspend Respondent Chaim Stern from participating in covered transactions as either a participant or a principal at HUD and throughout the Executive Branch of the Federal Government and from participating in procurement contracts at HUD pending resolution of the subject matter of the Criminal Information against Respondent handed down by the State of Connecticut on January 13, 1993, as modified on May 26, 1993.

THOMAS C. HEINZ
Administrative Law Judge

Dated: February 2, 1994.

CERTIFICATION OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by THOMAS C. HEINZ, Administrative Law Judge, HUDALJ 93-2048-DB(S), were sent to the following parties on this 2nd day of February, 1994, in the manner indicated:

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